

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
)
COUNTY OF MARION)**

**LORENA P. FLANIGAN,
Complainant,**

DOCKET NO. 04199

vs.

**FORD AEROSPACE &
COMMUNICATIONS CORPORATION,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On July 19, 1979, Kenneth W. Maher, Hearing Officer in the above cause, entered his recommendation neither party has filed objections that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and Ind. Admin. R. and Reg. §(22-9-1-6-35)(A).

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

Signed: July 20, 1979

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FORD AEROSPACE &
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Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above cause was the subject of a public administrative hearing held on May 2 and 3, 1979, in the rooms of this Commission. Kenneth W. Maher was appointed by the Commission to hear this cause.

Complainant was represented by Clyde Williams, Jr. and Lawrence M. Simkin, of the firm of Williams, Delaney and Simkin. Respondent was represented by W.C. Blanton of the firm of Ice, Miller, Donadio and Ryan.

Kenneth W. Maher, Hearing Officer for the Indiana Civil rights Commission ("ICRC"), having considered the evidence at the hearing, the arguments and briefs of respective counsel, including the Proposed Findings of Fact, Conclusions of Law and Order submitted by each, and being duly advised in the premises, hereby enters the following Recommended Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Complainant Lorena P. Flanigan (hereinafter referred to as ("Flanigan")) is a female citizen of the State of Indiana.

2. Respondent Ford Aerospace & Communications Corporation (hereinafter referred to as "FACC") is a Corporation which does business in the State of Indiana and has a plant located at Connersville, Indiana, which plant has at all times material to the instant complaint employed six (6) or more employees.
3. Flanigan was employed by FACC (then known as Philco Ford) as a Traffic Clerk, Sr., a salaried position, on December 12, 1966.
4. On May 29, 1973, Flanigan filed a complaint against FACC alleging sex discrimination in violation of the Indiana Civil rights Law by FACC. On December 28, 1978 an amended complaint was filed pursuant to the order of Commissioner Lang, then Presiding Officer.
5. Flanigan's employment with FACC, from the date of her employment until some time in early 1973, was in the Traffic Department.
6. The Traffic Department's overall responsibility to FACC's total operation was to insure the smooth flow of raw materials and component parts to the Connersville plant and to insure that FACC was properly billed by the transporters of those raw materials and components. Three primary functions performed by the Traffic Department were tariff audit, expediting and traffic analysis.
7. Flanigan's responsibilities as a Traffic Clerk, Sr. in the Traffic Department were those of a rate clerk function for motor carriers. Flanigan's job was to make sure that FACC was being properly charged by trucking companies for their haulage of materials coming to the Connersville plant.
8. Proper performance of Flanigan's job responsibilities required knowledge of a complex system of determining proper charges under the Interstate Commerce Commission's (I.C.C.'s) Rules and Regulations. Factors involved in determining the correct rate included: the point of origin (from which a determination was made as to which Tariff Bureau's tariffs applied) and the selection of the proper kind of rate (local or joint class rate, exception rate, various commodity rates or assembly and distribution rates).
9. Flanigan was hired by, and worked under the supervision of Mr. E.A. Nowacki until November, 1972.

10. Flanigan's performance was always rated as satisfactory while she worked under the supervision of Mr. E.A. Nowacki.
11. The evidence shows; however, that Mr. Nowacki's performance as a supervisor was unacceptable. (See Respondent's Exhibit FF and the testimony of Mr. Baker.)
12. In an attempt to improve the overall performance of the Traffic Department, Mr. Baker was made the "acting supervisor" of the department in November, 1972.
13. After assuming the responsibility for supervising Flanigan, Mr. Baker concluded that although Flanigan was familiar with and therefore generally accurate with Central States tariffs, she appeared to have little understanding of the tariffs published by other Tariff Bureaus and that she was not accurate with commodity and special commodity rates. This conclusion was based on Mr. Baker's audit of the 1971 freight bills and his working with Flanigan in 1972.
14. In December, 1972, Mr. Nowacki was fired.
15. Also in December, 1972 Mr. Baker rated Flanigan's performance as "satisfactory", but noted under "Plans for improvement and development" that she would "attend classes and lectures concerning General Office Procedures, Basic Traffic Procedures, and Advanced Traffic Rates & Routes" (emphasis added).
16. Mr. Baker's testimony that the satisfactory rating was given because of the short time he had been acting supervisor and a desire not to unduly damage Flanigan's work record is credible.
17. In February, 1973, Mr. Roy Pair was employed and placed in charge of the Traffic Department.
18. Mr. Pair was a much "tougher" supervisor than Mr. Nowacki. He was extremely hard on everybody compared to Mr. Nowacki. Mr. Pair was harder on both males and females than Mr. Nowacki had been.
19. Mr. Pair "harped" on people when they made mistakes The evidence shows that Mr. Pair probably "harped" on Flanigan more than the other Traffic Department employees. However, the evidence also shows that Flanigan probably made more mistakes than other Traffic Department employees.

20. Mr. Pair and Mr. Baker reviewed the employees of the Traffic Department, including Flanigan sometime shortly after Mr. Pair's arrival. They concluded that Flanigan was not satisfactorily performing her duties as a rate clerk.
21. As a result of this conclusion, the decision was made to reassign Flanigan to the warehousing and shipping area (which area was also under the management of Mr. pair) as a shipping clerk. this action was taken in early March of 1973 and Flanigan carried the same job title (Traffic Clerk, Sr.) and rate of pay to the new position.
22. Flanigan's position in the Traffic Department was not immediately filled, but instead her duties were distributed among the existing employees. There was no intention or effect of providing any benefit to these existing employees (who were male) as; in fact, they received additional work without any additional compensation therefore as a result.
23. Flanigan's new position involved increased typing duties for which she was not given any training. However, no evidence was presented to show that typing training was given by FACC to any employee, male or female, or that such failure the result of a discriminatory purpose.
24. This shipping clerk position has been created for Flanigan.
25. Flanigan worked this new position under the direct supervision of Mr. Hannefey initially, but when Mr. Hannefey began to bring errors to the attention of Mr. Pair, Mr. Pair assumed direct supervision of Flanigan. Mr. Pair continued to observe errors and that the work was not processed as rapidly as it should have been.
26. Flanigan was counseled y Mr. Pair, Mr. Darcy (Mr. Pair's Supervisor) and Mr. Tilrico (the Supervisor of salaried personnel) regarding the errors she was making.
27. On May 29, 1973, after approximately three months time and after several counseling sessions, Flanigan's performance was rated as unsatisfactory and she was removed from Mr. Pair's division then or shortly thereafter.
28. Mr. Tilrico attempted to locate other positions for Flanigan.
29. Mr. Tilrico did arrange for Flanigan to be interviewed by several managers and to work in various temporary capacities.

30. Mr. Tilrico, further, circulated a memo of Flanigan's experience to salaried departments and made personal contact with several managers in an attempt to place Flanigan.
31. Although Mr. Tilrico testified that there were no open requisitions for which Flanigan was qualified, the evidence did establish that there were openings in May, 1973, for a telephone/teletype Operator and Office Clerk B. However, since each of these positions was filled by female, the decisions to place other employees in these positions rather than Flanigan were based on factors other than sex.
32. Mr. Flanigan interviewed with Mr. Culhane for a position titled Administrative Clerk. This position involved riding a bicycle to travel to various production areas of the plant to monitor time cards, particularly with respect to overtime.
33. Although he had some reservations concerning Flanigan's ability to perform the job, Mr. Culhane said he would accept her in the position.
34. Mr. Tilrico decided not to place Flanigan in the Administrative Clerk because he felt Flanigan's physical condition and some unspecified lack of coordination would make it unsafe for her to be riding a bicycle around the plant.
35. Although Mr. Tilrico's decision was not based on any medical examination and may, in fact, have been based on an unfair assumption that Flanigan was not physically qualified for the position because of her age, the evidence does not establish that Flanigan was not physically qualified for the position because of her age the evidence does not establish that Flanigan was denied the position because of her sex.
36. In May, 1973, four Administrative Clerk position were filled. Three of the positions were filled by females and the fourth was filled by a male who had timekeeping experience which Flanigan did not, (See Respondent's Exhibits DD and EE).
37. Mr. Tilrico also testified that FACC's policy or practice was not to transfer employees who had been performing unsatisfactorily, but that the unsuccessful efforts were made to transfer Flanigan because of her personal situation and the fact that she was not vested under FACC's Pension Plan.

38. Evidence was introduced that Bruce Shube, a male, was allowed to transfer after receiving a review, which he considered to be unsatisfactory. However, the evidence also showed that Bruce Shube's performance had, in fact, been rated satisfactory, although he felt the review was unsatisfactory because of the written comments. (See Respondent's Exhibit E and Testimony of Bruce Shube).
39. Although certain hourly positions may have been available during this time, there is no evidence that Flanigan ever applied for hourly employment prior to September 7, 1973. the evidence also fails to establish that Flanigan ever requested a transfer to any particular hourly positions.
40. The failure to transfer Flanigan to a permanent position was based on a combination of factors other than sex, including on assessment of her physical condition, her unsatisfactory performance, preferences given to other females, and a failure to locate a position deemed suitable for her abilities.
41. On Friday, July 13, 1973 after Flanigan had performed in several temporary capacities and after attempts to place her in a permanent position had failed, Flanigan was discharged.
42. Flanigan's discharge was based on factors other than sex, which factors included unsatisfactory job performance as a rate clerk, unsatisfactory job performance as a shipping clerk, and the factors resulting in the failure to transfer Flanigan to another permanent position as found above.
43. There is no evidence that Flanigan was paid less than any male performing similar work at any time subsequent to February 28, 1973.
44. As a result of a complaint filed with the United States Department of Labor, a meeting was held and attended by Mr. Valantis of the Department of Labor, Flanigan, and Mr. Tilrico.
45. As a result of the meeting, Flanigan applied for employment as a production worker on September 7, 1973 and was so employed on October 29, 1973.

46. Flanigan was given a seniority date of October 29, 1973, and pay rate in accordance with the collective bargaining contract then in effect between FACC and International Union of Electrical Radio and Machine Workers, AFL-CIO and its Local 919.
47. There is no evidence that Flanigan was denied credit for her prior salaried employment in the establishment of this seniority date because of her sex or that any male was ever treated differently by being given credit for salaried employment occurring prior to the date of hire as an hourly employee.
48. Evidence was introduced to show that a discharged male employee, Lester Van Cleave, was reinstated to a salaried position with no loss of pay, benefits or service as result of conciliation of a charge of race discrimination filed with a different agency in 1976.
49. FACC's treatment of Lester Van Cleave was not the result of any purpose or intent of treating him any differently than Flanigan, but was instead the result of negotiations to resolve his individual complaint.
50. FACC's treatment of Flanigan could not have been the result of any intention of treating her differently than Lester Van Cleave since FACC could not have know that he would file a complaint some three years later or what would e required to resolve such complaint.
51. With respect to the terms and conditions of her employment, FACC did not discriminate against Mrs. Flanigaon on account of her sex any time subsequent to February 28, 1973; more specifically.
 - (a) FACC's re-assignment of Mrs. Flanigan's job responsibilities was not based in whole or in part on account of her sex;
 - (b) FACC's discharge of Mrs. Flanigan on July 31, 1973 was not based in whole or in part upon her sex;
 - (c) FACC's failure to transfer Mrs. Flanigan to another position rather than discharge her was not based in whole or in part upon her sex;
 - (d) FACC's failure to provide Mrs. Flanigan with training for a position other than Traffic Clerk, Sr. was not based in whole or in part upon her sex;

- (e) FACC did not at any time relevant herein deny Mrs. Flanigan equal pay for work performed by her which was equal to or comparable to work performed by male employees or otherwise determine her compensation based in whole or in part upon her sex;
 - (f) FACC's assignment of the seniority date of October 29, 1973, rather than October 10, 1966, to Mrs. Flanigan when she was re-hired as a non-salaried production worker was not based in whole or in part upon her sex.
52. Because of the absence of an act of unlawful discrimination, Complainant has suffered no damages cognizable under IC 22-9-1.
53. Any Conclusions of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

- 1. The complaint was timely filed under IC 22-9-1-3(o).
- 2. FACC is a "person" as that term is defined in IC 22-9-1-3(a).
- 3. FACC is an "employer" as that term is defined in IC 22-9-1-3(h).
- 4. The Indiana Civil Rights Commission has jurisdiction over the parties and the subject matter of Mrs. Flanigan's charge with respect to any claim that she was discriminated against by FACC on account of her sex with respect to the terms and conditions of her employment subsequent to February 29, 1973. IC 22-9-1-1 *et.seq.*
- 5. The Indiana Civil Rights Commission is without jurisdiction over the subject matter of Mrs. Flanigan's charge with respect to any claim that FACC has discriminated against her on account of her age with respect to the terms and conditions of her employment at any time and with respect to any claim that FACC has discriminated against her on account of her sex with respect to the terms and conditions of her employment prior to February 28, 1973. IC 22-9-1-1 *et. seq.*

6. FACC did not commit a “discriminatory practice” as that term is defined in IC 322-9-1-3(1) when it decided to reassign Flanigan from a rate clerk position to shipping clerk position because of its assessment that Flanigan was not satisfactorily performing the rate clerk position.
7. Flanigan failed to meet her burden of proof that FACC had committed a “discriminatory practice” by failing to provide her typing training when she failed to show that any such training had ever been provided to a male, or that such failure was the result of a discriminatory purpose.
8. FACC did not commit a “discriminatory practice” as that term is defined in IC 22-9-1-3(1) when it failed to transfer Flanigan for reasons other than her sex.
9. FACC did not commit a “discriminator practice” as that term is defined in IC 22-9-1-3(1) when it discharged Flanigan for reasons other than her sex.
10. Flanigan failed to meet her burden of proof that FACC had committed a “discriminatory practice” by denying equal pay for similar work when she failed to show that she was paid less than any male performing similar work at any time subsequent to February 28, 1973.
11. FACC did not commit a “discriminatory practice” as that term is defined in IC 22-9-1-3(1) when it re-employed Flanigan as a result of a conciliation meeting with the United States Department of Labor and established her seniority date and pay rate in accordance with the collective bargaining agreement then in effect.
12. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

The complaint of Complainant, Lorena P. Flanigan, shall be dismissed for the reasons aforesated.

Dated: June 19, 1979